IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.10.2007.

CORAM

THE HON'BLE MR.JUSTICE M.JEYAPAUL

Crl.O.P.Nos.26368 and 26381 of 2007

1. D.Grahalakshmi
2. V.S.Dhanasekaran
3. Sivagamasundari
4. D.Nagarajan
5. D.Ponkumaran
6. Abirami Ponkumaran — Petitioners in Crl.O.P.No.26368/2007

1. Dr.N.Rangabashyam
2. Mrs.Chitra Rangabashyam — Petitioners in Crl.O.P.No.26381/2007

vs.

1. State by Inspector of Police, W-25, All Women Police Station, T.Nagar, Chennai — 1st Respondent in Crl.O.P.No.26368/2007 & Respondent in Crl.O.P.No.26381/2007

2. T.Prasanth — 2nd respondent in Crl.O.P.No.26368/2007

Criminal Original Petitions filed under section 482 Cr.P.C. to call for the records pertaining to the case in C.C.No.5967 of 2007 which is pending trial on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For petitioners in Crl.O.P.No.26368/2007 : Mr.M.Ravindran, Senior Counsel for Mr.E.R.K.Moorthy

For petitioners in Crl.O.P.No.26381/2007 : Mr.R.Amizhdu

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For R1 (State) : Mr.J.C.Durairaj,
Govt. Advocate (Crl.Side)

For R2 in
Crl.O.P.No.26381/2007 : Mr.S.Shanmugasundaram,Sr.Advocate
for Mr.P.Anandan & Bhaskaran

COMMON ORDER

Accused 1 to 6 in C.C.No.5967 of 2007 have preferred Criminal Original Petition No.26368 of 2007 and Accused 7 and 8 in the very same Calendar Case have filed Criminal Original Petition No.26381 of 2007 seeking quashment of the aforesaid Criminal Proceedings pending before the learned XVII Metropolitan Magistrate, Saidapet, Chennai invoking the provision under section 482 of the Code of Criminal Procedure.

2. The second respondent, who is the husband of the first petitioner in Crl.O.P.No.26368 of 2007, has lodged a complaint before the learned XVII Metropolitan Magistrate Saidapet, Chennai seeking to prosecute the petitioners herein for offences punishable under sections 417, 418, 494, 496, 385, 387 read with section 120B and section 506(ii) IPC.

3. In the complaint submitted by the second respondent to the learned XVII Metropolitan Magistrate, Saidapet, Chennai, it has been alleged that his wife, the first petitioner had got married one Narayanan Venu prasath as early as on 30.11.1998 and registered the same on 30.12.1998 long prior to the marriage of the second respondent with the first petitioner on 1.9.2005. All the petitioners in both the criminal original petitions completely suppressed the earlier marriage and arranged the marriage of the first petitioner with the second respondent on 1.9.2005 and cheated the second respondent. Petitioners 4 to 6 in Crl.O.P.No.26368 of 2007 demanded huge amount from the second respondent during the course of hearing of the criminal case, threatening with acid attack. With the aforesaid allegations, the second respondent has prayed for prosecution of all the petitioners herein.

4. The learned XVII Metropolitan Magistrate, Saidapet, Chennai referred the aforesaid complaint under section 156(3) of the Code of Criminal Procedure to the first respondent Inspector of Police, W25, All Women Police Station, T.Nagar, Chennai, who registered the complaint in Crime No.16/2007 under sections 417, 495, 496, 385 and 506(ii) IPC and took up the case for

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investigation and filed final report before the said Court charging the first petitioner in Crl.O.P.No.26368 of 2007 for offences punishable under section 417 I.P.C. (cheating) and section 495 I.P.C. (solemnization of marriage concealing the first marriage), petitioners 2 and 3 in Crl.O.P.No.26368 of 2007 and both the petitioners in Crl.O.P.No.26381 of 2007 for offence punishable under section 496 IPC (conducting marriage ceremony fraudulently) and petitioners 4 to 6 in Crl.O.P.No.26368 of 2007 for offences punishable under sections 496 (conducting marriage ceremony fraudulently), 385 (putting in fear of injury for committing extortion) and 506(ii) (threat to cause death or grievous hurt) of IPC.

5. The petitioners in Crl.O.P.No.26368 of 2007 have contended in the petition seeking quashment that there is no prima facie case made out as against the petitioners for the alleged offences punishable under sections 495 and 496 IPC. There was no solemnization of marriage on 30.11.1998 at V.M.Kalyana Mandapam, Alwarpet, Chennai between the first respondent and Narayanan Venu Prasath as alleged. The registration of the marriage had been allegedly done on 30.12.1998 by producing a fake marriage invitation by Narayanan Venu Prasath. The alleged first marriage had not been performed as per the provisions of the Hindu Marriage Act, 25 of 1955. The registration of the marriage on 30.12.1998 is of no avail and therefore, the petitioners cannot be allowed to face the ordeal of Trial for offences punishable under sections 495 and 496 IPC. Immediately after the alleged threat of extortion, no complaint was laid by the second respondent. The second respondent has chosen to falsely implicate all the family members of the first petitioner. No offence of cheating can be brought against the first petitioner since there is no legally valid first marriage. The first petitioner has no authority to investigate the offences punishable under sections 495 and 496 IPC since cognizance of such offences can be taken by the learned Judicial Magistrate concerned only based on the private complaint laid by the aggrieved party. Matrimonial proceedings are pending between the parties wherein the alleged marriage with Narayanan Venu Prasath is going to be determined. Unless it is proved before the Matrimonial Court, the offences punishable under sections 495 and 496 IPC would not be attracted. The criminal proceedings initiated as against the petitioners are sheer abuse of process of court. The petitioners in Crl.O.P.No.26381 of 2007 have contended that they just participated in the marriage of the first petitioner with the second respondent. They were not at all aware of the alleged first marriage between the first petitioner and Narayanan Venu Prasath. No prima facie case has been made out

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as against them for offence punishable under section 496 IPC. Therefore, the petitioners in both the criminal original petitions would submit that the entire criminal proceedings in C.C.No.5967 of 2007 may be quashed.

6. In the counter filed by the first respondent, it has been stated that the offences mentioned in the charge sheet have been clearly made out. No valid ground is made out by any of the petitioners to quash the charge sheet.

7. The second respondent, who is the husband of the first petitioner in Crl.O.P.No.26368, in his counter, would reiterate the tenor of his complaint and has submitted that the charge sheet has been laid by the first respondent police having satisfied prima facie that the offences mentioned in the charge sheet have been made out. Therefore, quashing of the criminal proceedings does not arise for consideration.

8. The points that arise for consideration are

> 1) Whether there is prima facie case as against A1 for offences punishable under sections 417 and 495 I.P.C., A2 to A8 for offence punishable under section 496 IPC and A4 to A6 for offences punishable under sections 385 and 506(ii) IPC.
> 2) Whether taking cognizance of the offences punishable under sections 495 and 496 IPC based on the police report is legally sustainable.
> 3. Whether there is misjoinder of offences.
> 4. Whether the criminal proceedings in C.C.No.5967 of 2007 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai are liable to be quashed."

9. Point No.1:- Learned Senior Counsel appearing for the petitioners in Crl.O.P.No.26368 of 2007 would contend that the second respondent has initiated the instant criminal proceedings just to counter blast the complaint dated 7.5.2007 given by the first petitioner seeking justice for matrimonial offences committed by her husband and in- laws. The second respondent has come out with a totally artificial version as though a demand for five crore rupees was made and thereafter, step by step, the demand was hiked to fifty crore rupees just to attract the criminal offence. An imaginary allegation is thrown on 4th and 5th accused as though they threatened to throw acid on the second respondent. The materials collected by the first respondent

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would disclose that there was no valid marriage at all. Mere registration of the marriage in the absence of solemnization under Hindu Marriage Act will not attract either offence under section 495 IPC or under section 496 IPC. No complaint was lodged immediately after the alleged attempt to put in fear of injury in order to commit the offence of extortion. The materials collected, as such, does not prima face show that an offence was committed by the petitioners. The learned counsel appearing for the petitioners in Crl.O.P.No.26368 of 2007 would submit that the petitioners have been slapped with the allegation of the commission of offence punishable under section 496 IPC as they being the relatives of the wife of the second respondent failed to evince interest in conciliating the matrimonial dispute between the husband and wife. The second respondent has simply abused the process of law alleging that the petitioners in Crl.O.P.No.26381 of 2007 failed to disclose the factum of earlier marriage solemnized under their blessings.

10. Learned Government Advocate (Criminal Side) would submit that the investigation done by the respondent police would disclose prima facie that the petitioners in both the petitions have committed various offences charged as against them. The learned XVII Metropolitan Magistrate Saidapet, Chennai has rightly taken the case on file. The learned counsel appearing for the second respondent/complainant would submit that only in rare cases where the allegation does not constitute any offence and no supporting materials also have been collected by the investigating agency, the question of quashing the criminal proceedings would arise. The first husband has admitted the fact that he got married the first accused. The fact remains that they had not disclosed this fact to the complainant. The court is not supposed to go into the reliability or the genuineness of the allegations found prima facie as against the petitioners. Presumption arises in the face of the clinching material in the shape of marriage registration certificate available to establish prima facie that there was a marriage. Therefore, it is not a fit case to exercise the inherent jurisdiction of this court under section 482 of the code of Criminal Procedure.

11. It has been held in STATE OF MAHARASHTRA v. ISHWAR PIRAJI KALPATRI ((1996) 1 SCC 542) that the power of quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The court exercising its power under section 482 of the Code of Criminal Procedure is not justified in embarking upon a roving enquiry to find out the reliability or genuineness of the

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allegation made in the first information report or in the complaint. The courts should be posted of the stark reality that the extraordinary or inherent power conferred under section 482 of the Code of Criminal Procedure does not clothe an arbitrary jurisdiction on the court to act according to its whims or caprice.

12. The Honourable Supreme Court in MADHAVRAO J. SCINDIA v. SAMBHAJIRAO c. ANGRE ((1988) 1 SCC 696) observes as follows:

> "The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of case also quash the proceeding even though it may be at a preliminary stage."

13. The court will have to see whether a criminal prosecution has been slapped on the arch rival with an oblique purpose and whether it would be fruitful to allow a criminal prosecution to continue but, if the uncontroverted allegations prima face establish the offences alleged, then the court will have to ignore the objections, if any, raised as against the criminal prosecution and permit the Trial Court to go ahead with the process of trial.

14. It has been held in MUNICIPAL CORPORATION OF DELHI v. RAM KISHAN ROHTAGI ((1983) 1 SCC 1) as follows:-

> "It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the

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> same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting any thing, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."

15. Even at the stage where the complaint alone has been laid as against the accused, it can be quashed if on the face of the complaint or the documents annexed therewith no offence was made out. But, in this case, the cognizance of the offence has been taken after the investigation was embarked upon by the investigating agency on reference under section 156(3) of the Code of Criminal Procedure. But, at any rate, the court will have to find whether prima facie materials are available to charge the petitioners for the various offences slapped against them.

16. The learned XVII Metropolitan Magistrate, Saidapet, Chennai has taken cognizance of the case launched by the second respondent after the final report was filed by the first respondent as against A1 for offences punishable under sections 417 and 495 IPC, A2 to A8 for offence punishable under section 496 IPC and A4 to A6 for offences punishable under sections 385 and 506(ii) IPC.

17. The complaint preferred by the second respondent would read that the first accused Grahalakshmi having got married Narayanan Venu Prasath on 30.11.1998, registered the said marriage on 30.12.1998 and cheated the complainant suppressing the first marriage she solemnized with Narayanan Venu Prasath. The allegation as against A2 to A8 is that they having participated in the earlier marriage, chose to deliberately suppress the entire facts pertaining to the first marriage of the first accused with Narayanan Venu Prasath. The further allegation found in the complaint as against A4 to A6 is that many an occasion, during the proceedings of the matrimonial case before the Family Court, they, having demanded huge amount for settling the matrimonial dispute, threatened him with acid attack.

18. Let us now refer to the statements of the important witnesses recorded by the first respondent police. The complainant cited as LW1 has completely reiterated his allegation in the complaint lodged by him. As against the role of the petitioners in Crl.O.P.No.26381 of 2007, the complainant has stated before the first respondent police that his father

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requested Dr.Rangabashyam and his wife to intervene in the matrimonial dispute between the second respondent and his wife, but, he had given an evasive reply that they had stopped associating with the family of the in- laws of the second respondent.

19. Narayanan Venu Prasath was examined as LW4 by the first respondent. It is his version that the first accused and himself became thick friends and thereafter they decided to get married as the parents of the first accused were scouting for alliance. They also apprehended that both the family members might not give consent and therefore, they decided to register the marriage. Though there was no marriage on 30.11.1998 at V.M. Marriage Hall, he prepared a marriage invitation through his friend Sudhir for the purpose of producing the same before the Registrar for registration of the marriage. It is his emphatic version in his statement recorded under section 161 of the Code of Criminal Procedure that none of their family members was aware of the registered marriage. At one point of time after such registration of the marriage, the family members of the first accused were approached by Narayanan Venu Prasath, but, the mother of the first accused got angry. Thereafter, the relationship of Narayanan Venu Prasath with the first accused came to an end. Narayanan Venu Prasath has stated before the investigating officer that he got married Grahalakshmi, having been afraid of the family members, but, in fact, he did not live with her as husband and wife. In the further statement also, Narayanan Venu Prasath has come out with a version that, as he got married Grahalakshmi through registered marriage on 30.12.1998, in the aftermath of their love affair, he got a sim card with a telephone number for Grahalakshmi with her date of birth. He would further state that he provided credit facility for Grahalakshmi in his credit card as Grahalakshmi was his wife. The amount payable to the bank towards the credit card facility extended to both of them was paid only by him. At the fag end of 2003, he closed the said credit card facility, he reveals further.

20. P.Rajesh, LW5, who accompanied Narayanan Venu Prasath, has stated before the Inspector of Police during the course of investigation that Venu Prasath did inform him that he got married the first accused Grahalakshmi in the aftermath of his life affair with her. Thereafter, he went to the Registrar's Office as requested by him for the purpose of registration of the marriage. E.Sankar, LW6, who also allegedly participated in the registration of the marriage between Narayanan Venu Prasath and the first accused, would also say that Venu Prasath informed him that he

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married the first accused in a marriage hall at Alwarpet and therefore, he co-operated for the registration of the marriage. D.Chandrasekar, LW7, who also played some role in the registration of the marriage would state that Venu Prasath informed him that his marriage with the first accused Grahalakshmi needed registration for the purpose of securing passport. He would further reveal that Venu Prasath informed him that he got married Grahalakshmi following the love affair with her. It is his version that he found Venu Prasath and his wife Grahalakshmi at the Registrar's office. Sudhir Kumar, LW8 comes out with a statement that he located a broker in the office of the Registrar to register the marriage of Narayanan Venu Prasath with Grahalakshmi.

21. Mrs.Catherinal, LW9, who is working in the Registrar's office, would state that Venu Prasath informed her at the time of registration of the marriage that he got married Grahalakshmi on 30.11.1998 at V.M.Kalyana Mandapam at Alwarpet. He also annexed a copy of the marriage invitation along with the application seeking registration of the marriage. The witnesses, who accompanied Narayanan Venu Prasath informed her that they were witnesses to the marriage which took place at the marriage hall at Alwarpet. P.R.Venkataraj, LW12 who was the proprietor of the Marriage Hall at Alwarpet, has stated that he had not maintained any book or register during the relevant period to show whether the marriage hall was rented out for the purpose of conducting any marriage on 30.11.1998. K.Murali Iyer, LW13 has stated before the Inspector of Police during the course of investigation that he being a prohit had not solemnized any marriage between Narayanan Venu Prasath and Grahalakshmi at the marriage hall at Alwarpet on 30.11.1998.

22. D.Kanniappan, LW16, who is the Manager of the complainant, would state that on 3.1.2007, when the complainant was entering into the Family Court, Chennai through the back door, Pon Kumar, A5 and his wife Abirami Pon Kumar, A6 threatened him with slapping criminal prosecution under section 498A of the Code of Criminal Procedure if the complainant do not oblige with consent for divorce. On 12.2.2007, when he was entering into the Family Court through the back door at about 10.00 am, Nagarajan, A4 and Pon Kumar, A5 demanded eight crore rupees to settle the matrimonial dispute. Thereafter, on 15.3.2007, they again demanded a sum of fifty crore rupees from the complainant failing which they threatened to take criminal actin for offence punishable under section 498A IPC as against the complainant. Krishna Mohan, LW17 who is the Uncle of the complainant would also

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speak to the version spoken to by LW16.

23. The aforesaid statements recorded by the first respondent police in the aftermath of the reference of the complaint lodged by the second respondent invoking the provision under section 156 (3) of the Code of Criminal Procedure would disclose that Narayanan Venu Prasath has exhibited oscillation as to the factum of the first marriage. At one stage, he has stated that except the registration of the marriage, there was virtually no performance of the marriage. In the same breath, he would state that he married Grahalakshmi following the love affair he had with her. The marriage registration certificate and the marriage invitation have been seized by the first respondent police. The Proprietor of the marriage hall was not in a position to assertively say whether there was any such marriage on 30.11.1998 between Narayanan Venu Prasath and Grahalakshmi. The Prohit banks largely on his diary to say that he had not performed any such marriage at the marriage hall in Alwarpet. It is the admitted case that Narayanan Venu Prasath had already moved the Family Court seeking divorce from Grahalakshmi. The petitioners themselves have specifically referred to such a petition filed by Narayanan Venu Prasath before the Family Court in their petition seeking quashment. The aforesaid facts and circumstances would indicate that the complainant had not knocked at the doors of the learned XVII Metropolitan Magistrate Saidapet, Chennai without any material to his allegation. The court finds that there is some prima facie material to show that the marriage between Narayanan Venu Prasath and the first accused was registered on 30.12.1998 before the Registrar.

24. In this context, it is quite relevant to refer to the judgment of the Bench of this Court in SHAJI v. GOPINATH (AIR 1995 Madras 161) wherein it has been held that solemnization of the marriage as per section 7(2)(1) of the Hindu Marriage Act before the registration of the same under section 8 of the said Act is quite necessary to establish the marriage between the contending parties. When there is no marriage as contemplated under the provisions of the Hindu marriage Act, there could not have been any valid registration of marriage between the plaintiff and the defendant.

25. The sum and substance of the above ratio is that solemnization of marriage between the parties will have to be established independent of the registration of the same. The mere registration of the marriage cannot validate or sanctify lack of solemnization of marriage.

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26. This court in S.C.SHANTHI v. P.VENKATESH (AIR 1996 Madras 150) has held that marriage should have been solemnized in accordance with the provisions of the Hindu Marriage Act beforeever the marriage was registered. In the absence of any evidence to show that there was valid marriage, mere registration of the marriage will not testify to the solemnization of the marriage. A question arose before the Division Bench of the Calcutta High Court in MOUSUMI CHAKRABORTY v. SUBRATA GUHA ROY (II (1991) DMC 74 (DB)), whether the registration of marriage is a proof of solemnization of the marriage. The Division Bench has answered in the negative saying assertively that the validity of the marriage does not hinge on registration or omission to register the marriage. The Division Bench of the Gujarat High Court in MUKTA JESING v. VALLABHADAS (1994 CRL.L.J. 121) has observed that mere proof of registration of marriage at the caste organisation on payment of fee cannot be a proof of solemnization of marriage. The word "solemnize" means "to celebrate the marriage with proper ceremonies and in due form". Unless the marriage is celebrated or performed with proper ceremonies and due form, it cannot be said to be solemnized. But, of course, in the State of Tamil Nadu, by virtue of the Madras Amendment Act, 21/1967, section 7A was introduced in the Hindu Marriage Act. By virtue thereof, "Suya Mariyadhai" and "Seer Thirutha" Marriages in the presence of relatives, friends or other persons each declaring to take the other to be his spouse and by garlanding each other or by putting a ring upon the other or by tieing "thali" are lawfully recognised.

27. As already observed, this court is concerned with the prima facie case which is available on record for proceeding against the petitioners. The registration certificate and the marriage invitation in the background of the other oral statements recorded by the first respondent and the initiation of the proceedings by Narayanan Venu Prasath seeking divorce from Grahalakshmi would prima facie show that there was a marriage between the first accused and Narayanan Venu Prasath. The nuances of the ceremonies required to perfect the Hindu Marriage will have to be established only before the Trial Court. Of course, the Trial Court, after weighing the materials on record, has to render a finding whether there was, in fact, solemnization of marriage beforeever convicting the accused under sections 495 and 496 I.P.C. But, this court, within the ambit of section 482 of the Code of Criminal Procedure, cannot enter into such a roving enquiry to find the truth of such a prima facie allegation.

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28. It is to be noted here that the second respondent has collected sufficient materials to show that the marriage of Grahalakshmi with Narayanan Venu Prasath was concealed when the first accused contracted the subsequent marriage with the complainant. Specific allegation of suppression of the first marriage by A1 to A6 is found in the complaint lodged by the second respondent. The fact remains that A2 to A6 are the family members of A1. But, it is found that there is a very vague allegation without support of any materials that A7 and A8 knowing full well the first marriage, fraudulently suppressed the same and arranged the marriage of Grahalakshmi with the second respondent. None of the witnesses has spoken to the fact that the earlier marriage of Grahalakshmi with Narayanan Venu Prasath was attended by A7 and A8. The second respondent has come out with an imaginary and fanciful version without any basis that A7 and A8 would have come to know of the first marriage. Therefore, it is held hat no material is available on record to show prima facie that A7 and A8 committed offence punishable under section 496 IPC.

29. As regards the allegation of creating fear in the mind of the complainant in order to extort money from him, there is prima facie material on record as referred to above that A4 to A6 wielded threat to extort huge amount from the second respondent. Therefore, it is held that there is prima facie case against A1 for offence under sections 417 and 495 IPC, A2 to A6 for offence punishable under section 496 I.P.C., and A4 to A6 for offences punishable under sections 385 and 506(ii) IPC. But, there is dearth of prima facie case to proceed as against A7 and A8 for offence punishable under section 496 IPC. The point is answered accordingly.

30. Point No.2:- The next point which arises for determination is whether taking cognizance of the offences punishable under sections 495 and 496 IPC based on police report is legally sustainable. The learned Senior Counsel appearing for the petitioners would submit that the learned Judicial Magistrate is incompetent to take cognizance of the offences punishable under sections 495 and 496 IPC based on the police report. The cognizance of matrimonial dispute can be taken only based on the complaint. The learned counsel appearing for the second respondent would contend that if we read the entire scheme of the Code of Criminal Procedure, it would be crystal clear that the Judicial Magistrate has every authority to refer the private complaint of any shade to the police concerned for the purpose of investigation and based on the police report he can take cognizance of the private complaint.

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31. Now let us refer to the various provisions under the Code of Criminal Procedure pertaining to the private complaint procedure and the cognizance taken thereof. Any Station House Officer, on receipt of information in writing or reduced to writing reflecting commission of cognizable offence shall register the same as per the mandates of section 154(1) of the Code of Criminal Procedure. In case of refusal on the part of an Officer in charge of the Police Station to register the case, the person aggrieved may exercise the option to send the substance of such information in writing to the Superintendent of Police concerned who shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by the Code.

32. Chapter XIV of the Code of Criminal Procedure deals with the requisite conditions for initiation of criminal proceedings. A Judicial magistrate has the power to take cognizance of any offence on receipt of complaint of facts which constitute such offence or on receipt of a police report of such facts. He may also take cognizance of an offence based on his personal information about the commission of an offence. Section 191 of the Code of Criminal Procedure thus speaks about the source or genesis for taking cognizance of the offences by the Judicial Magistrate. Section 198 of the Code of Criminal Procedure is a special provision pertaining to the procedure to be adopted in taking cognizance of an offence against marriage. It mandates that no court shall take cognizance of an offence against marriage described in Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence.

33. The legislature has thought it fit to exclude the stranger to the matrimonial unit to invade the peace, privacy and tranquility of the matrimonial relationship of the parties. Therefore, it has been prescribed very carefully that only the aggrieved party to the matrimonial offence alone can set the law in motion.

34. Chapter XV of the Code of Criminal Procedure deals with the private complaint made to the Judicial Magistrate and the cognizance of the offences that can be taken by him. Section 200 of the Code mandates the Judicial Magistrate to examine upon oath the complainant and the witnesses brought by him beforeever he takes cognizance of an offence. Of course, some exceptions are there for such mandatory provision. The Magistrate, on receipt of a complaint, has the power to postpone the issue of process

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against the accused. He may enquire into the case himself or direct the investigation to be made by a police officer or even by any other agency whom he thinks fit for the sole purpose of deciding whether there is sufficient ground for proceeding against the accused. Of course, the said provision also is subject to certain exceptions. Section 203 of the Code of Criminal Procedure speaks about the dismissal of the complaint, if at all the Judicial Magistrate comes to the conclusion that there is no sufficient ground for proceeding against the accused as a result of the enquiry he himself conducted or the investigation done at his instance. As far as the cognizable cases are concerned, an officer in charge of the police station has authority to investigate even without the sanction of the Magistrate. But, even in case of a private complaint of a non-cognizable offence received under section 190 of the Code of Criminal Procedure by the learned Judicial Magistrate, the officer in charge of a police station can investigate like a cognizable case if it is referred by the learned Judicial Magistrate.

35. Section 198 of the Code speaks about the necessity of lodging a private complaint only by an aggrieved person. All private complaints can be filed only under section 190 of the Code of Criminal Procedure. If such a complaint reflects commission of cognizable offence or commission of combination of cognizable and non-cognizable offences, the Judicial Magistrate is well within his powers to refer the complaint under section 156(3) of the Code of Criminal Procedure for registration of the case and filing final report after investigation. But, it will have to be borne in mind that a complaint of cognizable offence simpliciter cannot be referred under section 156(3) of the Code of Criminal Procedure for registration of the case and investigation of the same, for section 156 of the Code of Criminal Procedure, as such, deals exclusive with the powers of the Police Officers to investigate only cognizable cases. As per section 155(4), where a case relates to two or more offences of which atleast one is cognizable, the case shall be deemed to be of a cognizable case, notwithstanding the fact that other offences are non-cognizable in nature.

36. Examination of the complainant and the witnesses present under section 200 of the Code does not arise while referring the complaint under section 156(3) of the Code. Even if there is no specific direction to register the complaint, the Station House Officer, on receipt of the complaint referred under section 156(3) of the Code, shall register a case, investigate the same and file final report. The complaints constituting either cognizable

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offences or non-cognizable offences can very well be dealt under sections 200 and 202 of the Code. If the Judicial Magistrate proceeds to take cognizance of an offence as per the procedure under sections 200 and 202 of the Code of Criminal Procedure, he shall examine the complainant and witnesses produced unless exempted specifically thereunder. While taking cognizance of the complaint of cognizable or non-cognizable offences under the aforesaid provision of law, he has the authority to direct investigation for the sole purpose of deciding whether or not sufficient ground exists for proceeding under section 204 of the Code of Criminal Procedure. It must be borne in mind that if a complaint is referred under section 202 of the Code of Criminal Procedure to a Police Officer, he shall not register the case, but, he shall straightaway plunge into investigation and submit a report reflecting result of his investigation and thereupon, the learned Judicial Magistrate shall either proceed further and issue process under section 204 of the code or dismiss the complaint under section 203 of the Code.

37. This court in JAGANATHAN, R. v. STATE OF TAMIL NADU, REPRESENTED BY THE SUB INSPECTOR OF POLICE, YERCAUD, ETC. (1994-1 LW (Crl.) 537) has held in para 4 as follows:-

> "The main grievance of learned counsel for the petitioner is that the offence under Section 500 I.P.C. is a non-cognizable one. Under Section 156(3) Cr.P.C. a Magistrate may order investigation by the Police only in respect of a cognizable case. So the order dated 15.6.1990 of learned Judicial Magistrate forwarding the complaint to Station House Officer, Yercaud for investigation and report is evidently wrong. Further, the Sub Inspector of Police who has investigated the offence has straightaway filed a charge sheet against the petitioner under Section 501 I.P.C and this has been taken on file by the court as C.C.No.51/92. Section 199 (1), Cr.P.C provides that no Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code which covers Sections 499 to 502 except upon a complaint made by some person aggrieved by the offence. In other words, Section 199 specifically prohits the taking into cognizance any complaint under section 500, I.P.C filed by persons other than the aggrieved. From the very

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wordings of the section it is clear that the provision is mandatory and the court is not competent to take cognizance of any complaint which is not filed by an aggrieved person. By no stretch of imagination it could be held that the Sub Inspector of Police is an aggrieved person in this case. Besides, the report of a Police Officer is not a complaint within the terms of Section 199 Cr.P.C. In Bhana V. Emperor (1911) 12 Crl.L.J.50) conviction under Section 498 I.P.C for enticing away a married woman was set aside for the reason that there was no complaint by the husband or guardian of an offence punishable under that section, as provided in section 199 of the Code of Criminal Procedure. The procedure adopted by learned Sessions Judge on the report of the Police Officer was held erroneous by the Punjab Chief Court. In Narasimhan V. Chokkappa (1973(2) S.C.R.40) the Apex Court has held that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person the trial and conviction of the accused would be void and illegal. So, the charge sheet in the present case has necessity to be quashed."

Relying upon the aforesaid decision, this court has again held in NAVANEETHAM v. ELLAPAN AND ANOTHER (1995-2-L.W. (Crl.) 478) as follows:-

"The order of the learned Magistrate shows that already a complaint has been filed by the petitioner for the offence under Section 494 I.P.C against the respondents herein, but the learned Magistrate has referred it either under Section 155(2) or under Section 156 Cr.P.C for investigation by the police. Mr.Sudanthiram, learned counsel appearing for the petitioner submits that under Section 198 Cr.P.C the offence under Section 494 I.P.C can be taken cognizance of by the Court only on the complaint of the aggrieved person, that the Court cannot take cognizance of the offence, on the report of the police after investigation either under Section 155(2) or 156 Cr.P.C and

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therefore, the investigation by the police becomes unnecessary, and the Court was wrong in referring the matter to the police for the offence under Section 494 read with Section 34 I.P.C. He also refers to a decision of this Court in Jaganathan,R. v. State of Police, Yercaud (1994-L.W. (Crl.) 537) wherein the complaint under Section 500 and 501 I.P.C given by a party was referred to under Section 156(3) Cr.P.C to the police for investigation and after filing of the report by the police, the further proceedings was taken by the Magistrate. It is observed in that case that for the offence under Sections 500 and 501 I.P.C only the party affected should file a complaint, that as the Court has to take cognizance of such offence only on such complaint from the party, the Court cannot take cognizance of the offence on the complaint of the police officer, and therefore, the proceedings on the basis of the report filed by the police will be illegal. In this case, if the report received from the police officer is the basis for proceeding against the respondents for the offence under Section 494 I.P.C., it will be illegal because the Court is bound to take cognizance of the said offence only on the complaint of the aggrieved party, and not on the report of the police officer. Therefore, as rightly contended by the learned counsel appearing for the petitioner, the Magistrate ought not to have referred this matter to the police for investigation either under Section 155(2) or 156, Cr.P.C for investigation and the Magistrate should have proceeded under Section 200 Cr.P.C for taking cognizance of the offence alleged by the petitioner. For this reason the return of the complaint on the ground that the complaint given previously is still pending enquiry is not proper."

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38. There should be a private complaint from an aggrieved person to take cognizance of matrimonial offences as per section 198 of Cr.P.C. But, the court cannot simply take cognizance, just looking into the tenor of complaint. The court is empowered to

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adopt the course charted either under section 156(3) or under sections 200 and 202 Cr.P.C. as the case may be. In Jaganathan's case referred to above, it is found that a private complaint was given only for a non-cognizable offence punishable under section 500 of the Indian Penal Code. Further, aggrieved person had not preferred the complaint. Likewise, in Navaneetham's case cited above, a private complaint for a non-cognizable offence punishable under section 494 of the Indian Penal Code alone was preferred before the learned Judicial Magistrate. But, in the instant case, it is found that the private complaint was lodged by the second respondent herein not only for cognizable offences but also for non-cognizable offences. Therefore, the learned XVII Metropolitan Magistrate, Saidapet, Chennai can either refer the complaint under section 156(3) of the Code of Criminal Procedure for registration and investigation of the case or proceed to take cognizance under sections 200 and 202 of the Code of Criminal Procedure. It is found that the cases referred to above are factually distinguishable and the ratio laid down therein will not apply to a complaint preferred for commission of both cognizable and non-cognizable offences.

39. The Honourable Supreme Court in STATE OF ORISSA v. SHARAT CHANDRA SAHU (1996 SCC (Cri.) 1387 has held as follows:

> "11. Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated as cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.
>
> 12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory

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> provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable."

40. In this case, cognizable and non-cognizable offence have been alleged in the complaint lodged by the second respondent. The learned Judicial Magistrate can either proceed under sections 200 and 202 of the Code of Criminal Procedure for taking cognizance of the case or refer the complaint under section 156(3) of the Code of Criminal Procedure for registration and investigation of the case. Even if a Judicial Magistrate has irregularly taken cognizance of an offence upon receiving a complaint of facts which constitute such offence or upon a police report of such facts as adumbrated under clause (a) or (b) of sub-section 1 of section 190 of the Code, such irregular proceedings of the Magistrate do not vitiate the prosecution as per section 460 of the Code of Criminal Procedure. Therefore, it is held that cognizance of the offences punishable under sections 495 and 496 of the Indian Penal Code alongwith other cognizable offences based on the complaint which merges with the police report is quite sustainable.

41. Point No.3:- The next point that arises for consideration is whether there is misjoinder of offences. It is true that the registration of the first marriage had taken place on 30.12.1998. The current marriage and the other events had taken place subsequently. This court in PERUMAL PILLAI & 2 OTHERS v. M.SIVAKAMI & AMUDA (1992 LW (Crl.) 159 has held has follows:-

> "As far as the second contention is concerned, I find sufficient force. Petitioners 4 to 8 have no connection whatever, with alleged commission of offences punishable under Ss.498-A and 406 of the Indian Penal Code. These two offences arise out of the marriage of the respondent with the third petitioner and were allegedly committed even before the bigamous marriage between the eighth petitioner and the third petitioner was performed at Madurantakam.

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> Not only the transactions relating to the two sets of offences are different, but also there is patent misjoinder of persons and offences alleged. If that be so, C.C.No.3 of 1989 will have to be restricted to petitioners 1 to 3 alone, who are alleged to have committed offences punishable under Ss.498-A and 406 of the Indian Penal Code arising out of the marriage between the third petitioner and the respondent. The pending complaint in so far as it concerns petitioners 4 to 8 will have to be necessarily quashed in respect of those offences alone."

In the aforesaid case, it is found that the offences punishable under section 498-A and 406 of the Indian Penal Code were committed long prior to the bigamous marriage. There had been misjoinder of accused also. The learned counsel appearing for the complainant also had admitted that there had been misjoinder of offences. In the instant case, the allegation of cheating, solemnization of the current marriage concealing the first marriage, performance of the marriage fraudulently and putting in fear of injury for commission of extortion and threat to cause death or grievous hurt are so inter-mingled and inter-twined that it is very difficult to separate one offence from the other. The series of acts were so connected together as to form part of the same matrimonial transaction of the second respondent. No prejudice also caused on account of combining series of transactions. As per section 220 of the Code of Criminal Procedure, more offences than one forming the same transaction can be taken cognizance of together and tried at one trial. All the offences alleged to have been committed revolve around the marriage of the second respondent with the first accused. Therefore, the court finds that there is no misjoinder of offences. The point is answered accordingly.

42. Point No.4:- The last point that arises for determination is whether the criminal proceedings in C.C.No.5967 of 2007 are liable to be quashed. It is found that there is no sufficient ground to proceed as against A7 and A8 for offence punishable under section 496 of the Indian Penal Code, but, there is sufficient prima facie material to prosecute A1 for offences punishable under sections 417 and 495 of the Indian Penal Code, A2 to A6 for offence punishable under section 496 of the Indian Penal Code and A4 to A6 for offences punishable under sections 385 and 506(ii) of the Indian Penal Code.

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43. Therefore, Criminal Original Petition 26368 of 2007 seeking to quash the criminal proceedings as against A1 to A6 stands dismissed. Quashing the criminal proceedings as against A7 and A8 in C.C.No.5967 of 2007, Criminal Original Petition 26381 of 2007 stands allowed. As the main Criminal Original Petitions are disposed of, Miscellaneous Petition Nos.1 and 2 in both the Criminal Original Petitions stand dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssk.
To

1. XVII Metropolitan Magistrate,
   Saidapet, Chennai.

2.-do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

3. The Inspector of Police,
   W-25, All Women Police Station, T.Nagar, Chennai

4.The Public prosecutor,
High Court, Madras.

+1cc to Mr.R.Amizhdhu,Advocate Sr 62988
+1cc to Mr.P.Anandan, Advocate Sr 63222
+3ccs to Mr.E.R.K.Moorrthy, Advocate sr 63069

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